

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10855 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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TRUMBAKLAL CHIMANLAL VORA

Versus

STATE OF GUJARAT

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Appearance:

MR KR KOSHTI for Petitioner

None present for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/06/1999

ORAL JUDGEMENT

1. The petitioner, a retired employee of Health and Medical Department of Government of Gujarat approaches to this court with the grievance that the respondents have not given him the retirement benefits i.e. pension, encashment of leave, L.T.C. amount of insurance and arrears of the salary etc. The grievance further has been made that the petitioner was not given the benefits

of higher pay scale on the completion of 9 - 18 - 27 years service respectively as well as the benefit of the revision of pay scale as per the Fifth Pay Commission recommendation.

2. Last grievance has been made that the amount of gratuity and G.P.F. has been given to the petitioner after his retirement, but after a long delay.

3. This petition has come up for preliminary hearing for admission in court on 21/12/98. On 21/12/98 the court has been pleased to issue notice as to why this special civil application should not be admitted and finally disposed of at the admission stage and it was made returnable on 19/1/99. On 19/1/99 the matter was adjourned to 2/2/99. On 2/2/99 it was adjourned to 8/2/99. On 8/2/99 it was adjourned to 24/2/99. On 24/2/99 the matter was adjourned to 17/3/99. On 17/3/99 the matter has been adjourned to 31/3/99. Though all these adjournments are made under a non-speaking orders but from the order of this court dated 31/3/99 it appears that these adjournments have been made on the request of the learned counsel for the State. Be that as it may. The very purpose of issuing of the notice for disposal of this matter finally at the admission stage has become nugatory and is defeated none other than by a welfare state and its officers. Taking it to be a case of a retired employee, who has not been paid all the retirement benefits the court would have adopted this course so that at the earliest the special civil application may be disposed of finally. The approach, attitude, behaviour, manner and fashion in which these matters are taken up by the functionaries and officers of the welfare state deserves to be highly deprecated. Because of this attitude of the functionaries and the officers of welfare state the matters are being delayed in the court. Even in those matters which are expected to be disposed of expeditiously, despite of making all endeavour by the court because of noncooperative attitude, which clearly reflected from these proceedings of the case, of the functionaries and officers of the welfare state it is made difficult. On 31/3/99 the court though could have disposed of the matter finally in the absence of reply to the special civil application as well as the Government Advocate but to give one more opportunity to the respondents, the matter was adjourned. The court has also ordered for the payment of the amount of the pension to the petitioner pursuant to the order of the respondent No.3 herein. From this order it transpires that the pension pay order has been issued. The learned counsel for the petitioner during the course

of the arguments has given out that the petitioner has not been paid of the retirement benefits, the benefits of the higher pay scale and the benefit of revision of pay scale as per the Fifth Pay Commission recommendation. On 31/3/99 the date on which rule was made returnable, Mr.V.B.Gharania put appearance for the respondents and on his request the matter was adjourned to 10/5/99 and on 10/5/99 the respondents neither filed reply to this special civil application nor any instruction has been given to the Government Advocate. Though at this stage this court could have disposed of the matter finally but last opportunity was given to the respondent and the matter was ordered to stand over to 15/6/99. It is unfortunate that despite of giving sufficient indulgence more than what it was necessary to the respondents, the total contribution of their in this case is that they have not even cared to see that the government officers remain personally present to make submission or to assist the Government Pleader.

4. Heard learned counsel for the petitioner and perused the special civil application. The averments made in the special civil application by the petitioner stands uncontroverted as neither of the respondents have chosen to file the reply to this special civil application. In view of this fact the averments made by the petitioner are taken to be uncontroverted. So it is not in dispute that the petitioner on attaining the age of superannuation retired from the Health & Medical Department, Government of Gujarat on 31/1/98. It is also not in dispute that the petitioner entered the government service on 8/5/63 so on the date of retirement he was having of his credit services for more than 35 years. It is also not in dispute that the petitioner has not been given the benefit of higher pay scale after completion of 9 - 18 - 27 years. It appears that his case was even not considered to give him the benefit of higher pay scale on completion of service of 9-18-27 years. It is true that the benefits of higher pay scale on completion of 9 - 18 - 27 years is not given as a matter of course or routine and where the service record of the concerned employee is not good he may be denied of these benefits. The respondents have not come up with the case that the petitioners case is considered for giving him the benefits of higher pay scale on completion of 9 - 18 - 27 years service. In the absence of this positive case from the side of the respondents, what the petitioner as contended has to be accepted. Similarly the averments made by the petitioner that he has not been given the benefits of the revised pay scale as per the Fifth Pay Commission recommendation has to be accepted. There is

nothing on record of the special civil application from the side of the respondents that the petitioner is given the benefits of the pension, encashment of leave, amount of insurance, L.T.C. etc. In the absence of these necessary averments from the respondents as well as any documentary evidence produced to show and establish that all these benefits are being given to the petitioner, it has to be accepted as a fact that the petitioner's grievances are correct. Moreover, this conduct of the respondents not to file the reply to this special civil application for more than 6 years and more so despite of grant of sufficient time for doing so by this court shows that they have no case to oppose this petition.

5. In the result, this special civil application succeeds and the same is allowed. The respondents are directed to consider the case of the petitioner for giving him the benefits of higher pay scale on completion of 9 - 18 -27 years service as per the Government resolution. This exercise has to be completed within a period of 2 months from the date of the receipt of the writ of this order and in case the petitioner found entitled for the benefits of higher pay scale those benefits be given to him within a period of one month next. The respondents are further directed to pay the petitioner the interest on the amount of the arrears of the fixation of his pay in higher pay scales from due date. Secondly, the respondents are directed to fix the pay of the petitioner in the revised pay scale as per the recommendation of the Fifth Pay Commission w.e.f. the date those recommendations were given effect by the Government of Gujarat for its employees. This exercise has to be completed within a period of 2 months from the date of the receipt of the writ of this order and the arrears of the fixation of the pay in the revised pay scale has to be paid within one month next together with interest thereof @12% p.a. from the due date.

6. The respondents are directed to fix the pension and all other retirement benefits on the basis of his revised pay in the revised pay scale as recommended by Fifth Pay Commission. The amount of the arrears of pension, gratuity, encashment of leave, insurance, L.T.C. etc. be paid to the petitioner within a period of one month from the date determination of the same. The exercise of determination of arrears etc. has to be completed within a period of 2 months from the date of the receipt of the writ of this order. The petitioner shall also be entitled for the interest on the amount of the arrears of fixation aforesaid found payable to him @12% from the due date.

7. So far as the claim of the petitioner of the interest for the delayed payment of the amount from the date of G.P.F. and gratuity is concerned the respondents are directed to pay the same @12% p.a. for period from 1/1/98 to 27/11/98. The petitioner is a retired employee, who was dragged into this litigation by none other than the officers of the welfare state and I consider it to be a fit case where the costs of this case has to be awarded to the petitioner. The respondents are directed to pay Rs.5,000/- to the petitioner towards costs whosoever employee-officer of the State of Gujarat is found negligent in discharging his duties and as a result of which the petitioner has not been given all the retirement benefits and other benefits within time, the amount of costs shall be recovered from the salary of the defaulting/erring employee-officer by the State of Gujarat. Similarly amount of interest shall be recovered from that employee/officer.

Rule is made absolute in terms, aforesaid.

(S.K.Keshote, J.)

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